nor what holders of the bonds, it being alleged that they "are subjects of different ownership and are not all in the hands of one person, and it cannot be determined from the said act of Congress what holder of said bonds, in excess of the amount named in the said act of Congress, shall not have the benefits of validation." And further, that at the time of the passage of the act of Congress there was more than one refunding act in force in the Territory, but what refunding act is referred to by the act of Congress is not disclosed.

The motions to suspend the peremptory writs were denied and the orders denying them were affirmed by the Supreme Court of the Territory. The latter court, however, modified the writs, as will be presently pointed out.

The assignments of error in the Supreme Court of the Territory repeated and emphasized the grounds urged in the motions to suspend the peremptory writs of mandamus. In this court the modification of the judgments by the Supreme Court of the Territory is attacked and some new contentions are made.

The case is submitted on briefs, and we shall not attempt to trace an exact correspondence of the arguments of appellants with the assignments of error, nor indeed shall we follow the details of the argument, but consider those matters only which we think can in any way affect the merits of the controversy. It will be observed in the beginning that the writs of mandamus issued by the District Court are but the execution by it of its judgments of the twenty-fourth of September, 1900, the amounts of which the board of commissioners were ordered to assess against the taxable property of the county and pay the same. We may say, therefore, at the outset that whatever could have been urged to prevent the rendition of the judgments cannot now be urged to prevent their enforcement. This disposes of the defense made against the orders under review, that the act of Congress validating the bonds is uncertain and indefinite, even if it had merit otherwise. The objections that are urged against the act of Congress are

that it cannot be understood from it what refunding act is referred to, there being two, it is contended, or whether all of the bonds issued under it have been validated or only an amount thereof, not exceeding $172,500.00, and if no more than $172,500.00, which bonds have been validated. And it is urged further that there is no identification of what holders of the bonds in excess of the amount named in the act of Congress shall not have the benefits of the validation. Manifestly such defenses should have been set up in the original actions and are now precluded by the judgments therein rendered. It is established by the judgments that the amount of bonds issued was in accordance with the act of Congress and was not excessive in amount, and also that the plaintiffs in the action (appellees here) were legal owners of such bonds and entitled to the "benefits of validation." *Murphy* v. *Utter*, 186 U. S. 95, 113. The appellants, therefore, are confined to the other objections urged by them.

The principal of these objections is that peremptory writs should not have been issued without a hearing, and that there should have been a demand made of the commissioners before suit. As to the first, it may be said that it probably appeared to the District Court that the board could have no possible excuse, and in such case a peremptory writ is authorized in the first instance by the laws of the Territory. By § 2764 of the Compiled Laws of New Mexico for the year 1897 it is provided that "when the right to require the performance of the act is clear, and it is apparent no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance."

The second ground is also untenable. The original judgments expressed the obligation of the board. They imposed the duty of levying taxes to pay them, and, it is alleged, that the board had levied taxes for other territorial and county purposes, but had failed and refused to make any levy whatever to pay the judgments. In other words, it is averred, that it is clearly the purpose of the board not to perform the

duty imposed upon it. In such a case no demand is necessary. *Northern Pacific R. R.* v. *Dustan*, 142 U. S. 492, 508.

We are therefore brought to the consideration of the sufficiency of the excuses which the board made in its motions to suspend the writs. We may briefly repeat them: (1) that portions of Santa Fé County were attached to other counties, which portions are subject to the payment of the judgments, and that the board is without jurisdiction over them; (2) that a levy of eighty-two mills had been made, which is a lien upon the property of Santa Fé County "as then existing," and that the board is without authority to enforce the collection of the levy; (3) that the levy of twenty mills (ten in each case) is excessive; (4) that the board was entitled to be heard as to the amount of the levy, or whether any levy was necessary, "there existing upon the tax rolls a legal and adequate levy to cover" the judgments which it is the duty of the tax collector to collect; (5) that it was impossible to determine the amount of the levy necessary for the year succeeding the year 1905 until the rolls for that year had been completed and the amount of taxable property determined; (6) that the board is not in default and should not be held liable until in default.

The District Court evidently considered that these excuses were without substantial merit, and such also was the view of the Supreme Court of the Territory. To the first, that is that the portions of Santa Fé County which had been segregated from it should have been included in the writs, it was replied by the Supreme Court that it was provided by Chapter 20 of the Session Laws of 1903 that such segregated portions were required to contribute their just proportion to the bonded debt of Santa Fé, that provision was made for assessment, levy and collection of such proportion by the officers of the new county upon the order of the old county, and that the money collected should be paid into the treasury of the old county. It was therefore decided that the county of Santa Fé could "compel contribution from the two other counties

which had received a portion of its territory, in proportion to the amount of taxable property received, and this is the method provided by law." This view of the statute is not directly attacked by appellants, and, if it may be said that the general argument is a criticism of it, the answer is what was said in *English* v. *Arizona*, 214 U. S. 359, 363, that "unless in a case of manifest error, this court will not disturb a decision of the Supreme Court of a Territory construing a local statute." Chapter 20 of the Session Laws of 1903 is an answer also to other contentions of appellants. If the county of Santa Fé is primarily liable for the bonds she is the proper party to an action upon them, and through her officers the payment of the judgments recovered can be enforced. The contention of appellants, therefore, that the counties of Rio Arriba and Torrance are "necessary parties to a complete determination of the case," is untenable, as indeed all other contentions that are based upon the addition to those counties of portions of Santa Fé County.

The most serious contentions of appellants are that the levy of eighty-two mills was sufficient to pay the judgments, interest and costs, and that the levy of twenty mills in addition was excessive. We think, however, that the reply made by the Supreme Court of the Territory adequately disposed of them. The learned court pointed out that the resolution of the board of county commissioners, a copy of which appears in the record, showed that the levy of eighty-two mills had the purpose only, and was sufficient only, to pay the then amount of the judgments, together with interest. It was further pointed out that the interest to accrue was not provided for, and that it amounted on the day when the peremptory writs of mandamus were issued to $32,874.05. It follows necessarily, as the court said, that the contention that the eighty-two mills levied was sufficient, "is unfounded and untrue in fact." To the contention that the twenty mills levied are excessive, in that they are more than sufficient to pay $32,874.05, the court replied that, if this were so, the

peremptory writs should not have been issued. But, the court added, it is not shown that the assessable value of property in Santa Fé County has increased, while it does appear on the other hand that portions of the county had been cut off; therefore, it was said, it is fair to presume "that the assessed valuation of the county is not in excess of what it was in 1901, when the eighty-two mills levy was made." From this presumption it was concluded that twenty mills would produce, if collected in full, $32,996.00, an excess only of $112.05. And it was observed that since the peremptory writs were issued interest had accrued to the amount of $10,000.00.

The writs required not only the levy of twenty mills for the year 1905, but for each and every year thereafter and until the judgments with interest and costs be paid. This the Supreme Court pronounced error, and modified the judgments by striking out the requirements for a continuous levy. This appellants assign as error, contending that the Supreme Court had no jurisdiction to modify the judgments of the lower court, and that by doing so it changed the "theory and cause of action." The argument to sustain the contention is somewhat roundabout. Exclusive original jurisdiction in mandamus, it is said, is conferred on the District Court by § 2771 of the laws of the Territory, and, while an appeal lies to the Supreme Court as in other civil actions (§ 2772), that the power of the court to modify the judgment of a district court, given by § 897,[1] does not extend to a judgment in

[1] "In all cases now pending in the Supreme Court or which may be hereafter pending in the Supreme Court, and which may have been tried by the equity side of the court, or which may have been tried by a jury on the common law side of the court, or in which a jury may have been waived and the case tried by the court or the judge thereof, it shall be the duty of the Supreme Court to look into all the rulings and decisions of the court which may be apparent upon the records, or which may be incorporated in the bill of exceptions, and pass upon all of them and upon the errors if any shall be found therein, in the rulings and decisions of the court below, grant a new

mandamus. The jurisdiction of the Supreme Court, it is urged, "was simply to affirm or reverse and remand." This, it will be observed, is very general. It would seem even to imply that the Supreme Court has not even the power of direction, but must leave the District Court to get right ultimately through successive judgments, appeals and reversals. And the anomaly is attempted to be sustained by saying that mandamus is not included in the useful power given to the Supreme Court by § 897 in cases taken to it to "render such other judgment as may be right and just and in accordance with law," because, it is said, that mandamus "is not a case on the equity side of the court, nor is it one tried on the law side with a jury, nor is it one in which a jury has been waived and trial had by the court or judge, especially as concerns the present proceeding." This is a misunderstanding of the statute. Its purpose is to not only give the power to review, but to prevent its defeat through the distinction between causes of action and modes of trial. Further argument is unnecessary. Even if the contention had grounds of support it would be answered by the case of *English* v. *Arizona*, 214 U. S. 359, and the case of *Armijo* v. *Armijo*, 181 U. S. 558, 561. In the latter case we said that practice "in the courts of the Territory is based upon local statutes and procedure, and we are not disposed to review the decision of the Supreme Court in such cases. *Sweeney* v. *Lomme*, 22 Wall. 208." Of the other contentions of appellants, it is enough to say that they are without merit.

Judgments affirmed.

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trial or render such other judgment as may be right and just, and in accordance with law; and said Supreme Court shall not decline to pass upon any question of law or fact which may appear in any record either upon the face of the record or in the bill of exceptions, because the cause was tried by the court or judge thereof without a jury, but shall review said cause in the same manner and to the same extent as if it had been tried by a jury."